

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

ANTHONY MURPHY,	:	
Plaintiff	:	CIVIL ACTION NO. 3:12-1919
v.	:	(MANNION, D.J.)
		(CARLSON, M.J.)
UNITED STATES OF AMERICA,	:	
Defendant	:	

MEMORANDUM

Pending before the court is a report and recommendation filed by Judge Carlson on July 24, 2013, to which no objections have been filed. (Doc. No. [27](#)). In his report, Judge Carlson recommends that the defendant's motion to dismiss, (Doc. No. 15), be granted and that this action be dismissed, without prejudice, while the plaintiff attempts to exhaust his administrative remedies. Upon review, the court will adopt Judge Carlson's report.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." [Fed. R. Civ. P. 72\(b\)](#), advisory committee notes; see also [Univac Dental Co. v. Dentsply Intern., Inc.](#), 702 F.Supp.2d 465, 469 (2010) (citing [Henderson v. Carlson](#), 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every Report and Recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate

judge. [28 U.S.C. §636\(b\)\(1\)](#); Local Rule 72.31.

Within his report, Judge Carlson thoroughly reviews the allegations of the plaintiff's complaint which is brought pursuant to the Federal Tort Claims Act, as well as the law regarding the required exhaustion of administrative remedies under that Act. Judge Carlson concludes that the plaintiff failed to pursue the required administrative remedies before filing the instant action, thus depriving the court of subject matter jurisdiction to consider his claims at this point in time. As a result, he recommends that the complaint be dismissed, without prejudice, while the plaintiff properly exhausts his administrative remedies. Because the court agrees with the sound reasoning that led Judge Carlson to the conclusions in his report and finds no clear error on the face of the record, the court will adopt the report in its entirety. An appropriate order shall issue.

s/ *Malachy E. Mannion*
MALACHY E. MANNION
United States District Judge

Date: August 26, 2013

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